



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2016-0603; FRL-9978-11-Region 5]

**Air Plan Approval; Minnesota; PSD Infrastructure SIP
Requirements**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve elements of a state implementation plan (SIP) submission from Minnesota regarding the infrastructure requirements of section 110 of the Clean Air Act (CAA) relating to Prevention of Significant Deterioration (PSD) for the 1997 ozone, 1997 fine particulate (PM_{2.5}), 2006 PM_{2.5}, 2008 lead (Pb), 2008 ozone, 2010 nitrogen dioxide (NO₂), 2010 sulfur dioxide (SO₂), and 2012 PM_{2.5} National Ambient Air Quality Standards (NAAQS). The Minnesota Pollution Control Agency (MPCA) submitted the SIP revision to EPA on October 4, 2016.

DATES: Comments must be received on or before **[insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R05-OAR-2016-0603 at <http://www.regulations.gov>, or via email to aburano.douglas@epa.gov. For comments submitted at

Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the "For Further Information Contact" section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Eric Svingen, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), Environmental Protection Agency,

Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604,
(312) 353-4489, svingen.eric@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA. This supplementary information section is arranged as follows:

- I. What is the background of this SIP submission?
- II. What guidance is EPA using to evaluate this SIP submission?
- III. What is the result of EPA’s review of this SIP submission?
- IV. What action is EPA taking?
- V. Statutory and Executive Order Reviews

I. What is the background of this SIP submission?

This rulemaking proposes to approve a SIP submission from MPCA dated October 4, 2016, which addresses infrastructure requirements relating to PSD for the 1997 ozone, 1997 PM_{2.5}, 2006 PM_{2.5}, 2008 Pb, 2008 ozone, 2010 NO₂, 2010 SO₂, and 2012 PM_{2.5} NAAQS.

The requirement for states to make infrastructure SIP submissions arises out of CAA section 110(a)(1). Pursuant to CAA section 110(a)(1), states must make SIP submissions “within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof),” and these SIP

submissions are to provide for the "implementation, maintenance, and enforcement" of such NAAQS. The statute directly imposes on states the duty to make these SIP submissions, and the requirement to make the submissions is not conditioned upon EPA's taking any action other than promulgating a new or revised NAAQS. CAA section 110(a)(2) includes a list of specific elements that "[e]ach such plan" submission must address.

EPA has historically referred to these SIP submissions made for the purpose of satisfying the requirements of CAA section 110(a)(1) and (2) as "infrastructure SIP" submissions. Although the term "infrastructure SIP" does not appear in the CAA, EPA uses the term to distinguish this particular type of SIP submission from submissions that are intended to satisfy other SIP requirements under the CAA. This specific rulemaking is only taking action on the infrastructure SIP elements relating to PSD, provided at CAA sections 110(a)(2)(C), 110(a)(2)(D)(i)(II), 110(a)(2)(D)(ii), and 110(a)(2)(J).

In previous rulemakings, EPA addressed Minnesota's infrastructure obligations under the various NAAQS. On July 13, 2011 (76 FR 41075), EPA approved most elements of Minnesota's infrastructure SIP submittal for the 1997 ozone and 1997 PM_{2.5} NAAQS. On October 29, 2012 (77 FR 65478), EPA approved most

elements of Minnesota's infrastructure SIP submittal for the 2006 PM_{2.5} NAAQS. On July 16, 2014 (79 FR 41439), EPA approved most elements of Minnesota's infrastructure SIP submittal for the 2008 Pb NAAQS. Finally, on October 20, 2015 (80 FR 63436), EPA approved most elements of Minnesota's infrastructure SIP submittal for the 2008 ozone, 2010 NO₂, 2010 SO₂, and 2012 PM_{2.5} NAAQS. However, because Minnesota did not have an approved PSD program at the time of these rulemakings, EPA generally disapproved infrastructure SIP elements relating to PSD in the rulemakings.¹

MPCA's submission dated October 4, 2016, requested that EPA approve into its SIP Minnesota Rule 7007.3000, which incorporates by reference the Federal PSD rules at 40 CFR 52.21. On July 10, 2017 (82 FR 31741), EPA proposed to approve this request, and on September 26, 2017 (82 FR 44734), EPA finalized approval; the change became effective on October 26, 2017. Therefore, Minnesota is now implementing its own SIP-approved PSD program.

¹ States may develop and implement their own PSD programs, which are evaluated against EPA's requirements for each component. States may alternatively decline to develop their own program, but instead directly implement Federal PSD rules. At the time of the infrastructure rulemakings referenced above, Minnesota had chosen to implement the Federally promulgated PSD rules at 40 CFR 52.21, and EPA had delegated to Minnesota the authority to implement these regulations. The Federally promulgated rules satisfied all infrastructure requirements relating to PSD. However, as a delegated program, these infrastructure elements were not approved into the Minnesota SIP.

In this rulemaking, as requested by Minnesota, EPA is proposing to find that Minnesota has satisfied all infrastructure SIP elements relating to PSD, at CAA sections 110(a)(2)(C), 110(a)(2)(D)(i)(II), 110(a)(2)(D)(ii), and 110(a)(2)(J), for the 1997 ozone, 1997 PM_{2.5}, 2006 PM_{2.5}, 2008 Pb, 2008 ozone, 2010 NO₂, 2010 SO₂, and 2012 PM_{2.5} NAAQS.

II. What guidance is EPA using to evaluate this SIP submission?

EPA's guidance relating to infrastructure SIP submissions can be found in a guidance document entitled "Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-hour Ozone and PM_{2.5}² National Ambient Air Quality Standards" (2007 Guidance)³. Further guidance is provided in a September 13, 2013, document entitled "Guidance on Infrastructure State Implementation Plan (SIP) Elements under CAA Sections 110(a)(1) and (2)" (2013 Guidance)⁴.

III. What is the result of EPA's review of this SIP submission?

Pursuant to CAA section 110(a), states must provide reasonable notice and opportunity for public hearing for all infrastructure SIP submissions. MPCA commenced a public comment

² PM_{2.5} refers to particles with an aerodynamic diameter of less than or equal to 2.5 micrometers, oftentimes referred to as "fine" particles.

³ [https://www3.epa.gov/ttn/naaqs/aqmguid/collection/cp2/20071002_harnett_110\(a\)_sip_guidance.pdf](https://www3.epa.gov/ttn/naaqs/aqmguid/collection/cp2/20071002_harnett_110(a)_sip_guidance.pdf)

⁴ https://www3.epa.gov/airquality/urbanair/sipstatus/docs/Guidance_on_Infrastructure_SIP_Elements_Multipollutant_FINAL_Sept_2013.pdf

period on June 20, 2016, and closed the public comment period on July 20, 2016. Minnesota received three comments, and provided a response to comments in its submittal.

Minnesota provided a synopsis of how its SIP meets each of the applicable requirements in CAA sections 110(a)(2)(C), 110(a)(2)(D)(i)(II), 110(a)(2)(D)(ii), and 110(a)(2)(J) for the 1997 ozone, 1997 PM_{2.5}, 2006 PM_{2.5}, 2008 Pb, 2008 ozone, 2010 NO₂, 2010 SO₂, and 2012 PM_{2.5} NAAQS, as applicable. The following review evaluates the state's submission.

A. CAA section 110(a)(2)(C)

States are required to include a program providing for enforcement of all SIP measures and the regulation of construction of new or modified stationary sources to meet new source review (NSR) requirements under PSD and nonattainment NSR (NNSR) programs. Part C of the CAA (sections 160 - 169B) addresses PSD, while part D of the CAA (sections 171 - 193) addresses NNSR requirements.

The evaluation of the state's submission addressing the infrastructure SIP requirements of CAA section 110(a)(2)(C) covers: (i) enforcement of SIP measures; (ii) PSD provisions that explicitly identify oxides of nitrogen (NO_x) as a precursor to ozone in the PSD program; (iii) identification of precursors

to PM_{2.5} and the identification of PM_{2.5} and PM₁₀⁵ condensables in the PSD program; (iv) PM_{2.5} increments in the PSD program; and, (v) greenhouse gas (GHG) permitting and the "Tailoring Rule."⁶

Sub-element 1: Enforcement of SIP measures

States are required to include a program providing for enforcement of all SIP measures and the regulation of construction of new or modified stationary sources to meet NSR requirements under PSD and NNSR programs.

In our previous rulemakings at 76 FR 41075, 77 FR 65478, 79 FR 41439, and 80 FR 634536, EPA determined that Minnesota has met the enforcement of SIP measures requirements of CAA section 110(a)(2)(C) with respect to the 1997 ozone, 1997 PM_{2.5}, 2006 PM_{2.5}, 2008 Pb, 2008 ozone, 2010 NO₂, 2010 SO₂, and 2012 PM_{2.5} NAAQS.

Sub-element 2: PSD provisions that explicitly identify NO_x as a precursor to ozone in the PSD program

⁵ PM₁₀ refers to particles with an aerodynamic diameter of less than or equal to 10 micrometers.

⁶ In EPA's April 28, 2011, proposed rulemaking for infrastructure SIPs for the 1997 ozone and PM_{2.5} NAAQS, we stated that each state's PSD program must meet applicable requirements for evaluation of all regulated NSR pollutants in PSD permits (see 76 FR 23757 at 23760). This view was reiterated in EPA's August 2, 2012, proposed rulemaking for infrastructure SIPs for the 2006 PM_{2.5} NAAQS (see 77 FR 45992 at 45998). In other words, if a state lacks provisions needed to adequately address NO_x as a precursor to ozone, PM_{2.5} precursors, PM_{2.5} and PM₁₀ condensables, PM_{2.5} increments, or the Federal GHG permitting thresholds, the provisions of CAA section 110(a)(2)(C) requiring a suitable PSD permitting program must be considered not to be met irrespective of the NAAQS that triggered the requirement to submit an infrastructure SIP, including the 2012 PM_{2.5} NAAQS.

EPA's "Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard - Phase 2; Final Rule to Implement Certain Aspects of the 1990 Amendments Relating to New Source Review and Prevention of Significant Deterioration as They Apply in Carbon Monoxide, Particulate Matter, and Ozone NAAQS; Final Rule for Reformulated Gasoline" (Phase 2 Rule) was published on November 29, 2005 (70 FR 71612). Among other requirements, the Phase 2 Rule obligated states to revise their PSD programs to explicitly identify NO_x as a precursor to ozone (see 70 FR 71612 at 71679, 71699-71704). This requirement was codified at 40 CFR 51.166 and 40 CFR 52.21.

The Phase 2 Rule required that states submit SIP revisions incorporating the requirements of the rule, including the provisions specific to NO_x as a precursor to ozone, by June 15, 2007 (see 70 FR 71612 at 71683).

On September 26, 2017 (82 FR 44734), EPA approved into the Minnesota SIP Minn. R. 7007.3000, which incorporates by reference "as amended" the Federal PSD rules at 40 CFR 52.21. These Federal PSD rules fully satisfy the requirements of CAA section 110(a)(2)(C) regarding NO_x as a precursor to ozone. EPA therefore proposes that Minnesota has met this set of infrastructure SIP requirements of CAA section 110(a)(2)(C) with

respect to the 1997 ozone, 1997 PM_{2.5}, 2006 PM_{2.5}, 2008 Pb, 2008 ozone, 2010 NO₂, 2010 SO₂, and 2012 PM_{2.5} NAAQS.

Sub-element 3: Identification of precursors to PM_{2.5} and the identification of PM_{2.5} and PM₁₀ condensables in the PSD program

On May 16, 2008 (73 FR 28321), EPA issued the Final Rule on the "Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers (PM_{2.5})" (2008 NSR Rule). The 2008 NSR Rule finalized several new requirements for SIPs to address sources that emit direct PM_{2.5} and other pollutants that contribute to secondary PM_{2.5} formation. One of these requirements is for NSR permits to address pollutants responsible for the secondary formation of PM_{2.5}, otherwise known as precursors. In this rule, EPA identified precursors to PM_{2.5} for the PSD program to be SO₂ and NO_x (unless the state demonstrates to the Administrator's satisfaction or EPA demonstrates that NO_x emissions in an area are not a significant contributor to that area's ambient PM_{2.5} concentrations). The 2008 NSR Rule also specifies that volatile organic compounds (VOCs) are not considered to be precursors to PM_{2.5} in the PSD program unless the state demonstrates to the Administrator's satisfaction or EPA demonstrates that emissions of VOCs in an area are significant contributors to that area's ambient PM_{2.5}

concentrations.

The explicit references to SO₂, NO_x, and VOCs as they pertain to secondary PM_{2.5} formation are codified at 40 CFR 51.166(b) (49) (i) (b) and 40 CFR 52.21(b) (50) (i) (b). As part of identifying pollutants that are precursors to PM_{2.5}, the 2008 NSR Rule also required states to revise the definition of "significant" as it relates to a net emissions increase or the potential of a source to emit pollutants. Specifically, 40 CFR 51.166(b) (23) (i) and 40 CFR 52.21(b) (23) (i) define "significant" for PM_{2.5} to mean the following emissions rates: 10 tons per year (tpy) of direct PM_{2.5}; 40 tpy of SO₂; and 40 tpy of NO_x (unless the state demonstrates to the Administrator's satisfaction or EPA demonstrates that NO_x emissions in an area are not a significant contributor to that area's ambient PM_{2.5} concentrations). The deadline for states to submit SIP revisions to their PSD programs incorporating these changes was May 16, 2011 (see 73 FR 28321 at 28341).⁷

⁷ EPA notes that on January 4, 2013, the U.S. Court of Appeals for the D.C. Circuit, in *Natural Resources Defense Council v. EPA*, 706 F.3d 428 (D.C. Cir.), held that EPA should have issued the 2008 NSR Rule in accordance with the CAA's requirements for PM₁₀ nonattainment areas (Title I, Part D, subpart 4), and not the general requirements for nonattainment areas under subpart 1 (*Natural Resources Defense Council v. EPA*, No. 08-1250). As the subpart 4 provisions apply only to nonattainment areas, EPA does not consider the portions of the 2008 NSR Rule that address requirements for PM_{2.5} attainment and unclassifiable areas to be affected by the court's opinion. Moreover, EPA does not anticipate the need to revise any PSD requirements promulgated by the 2008 NSR Rule in order to comply with the court's decision.

The 2008 NSR Rule did not require states to immediately account for gases that could condense to form particulate matter, known as condensables, in PM_{2.5} and PM₁₀ emission limits in NSR permits. Instead, EPA determined that states had to account for PM_{2.5} and PM₁₀ condensables for applicability determinations and in establishing emissions limitations for PM_{2.5} and PM₁₀ in PSD permits beginning on or after January 1, 2011. This requirement is codified in 40 CFR 51.166(b)(49)(i)(a) and 40 CFR 52.21(b)(50)(i)(a). Revisions to states' PSD programs incorporating the inclusion of condensables were required to be submitted to EPA by May 16, 2011 (see 73 FR 28321 at 28341).

On September 26, 2017 (82 FR 44734), EPA approved into the Minnesota SIP Minn. R. 7007.3000, which incorporates by reference "as amended" the Federal PSD rules at 40 CFR 52.21. These Federal PSD rules fully satisfy the requirements of CAA

Accordingly, EPA's approval of Minnesota's infrastructure SIP as to elements relating to PSD, provided at CAA sections 110(a)(2)(C), 110(a)(2)(D)(i)(II), 110(a)(2)(D)(ii), and 110(a)(2)(J), with respect to the PSD requirements promulgated by the 2008 NSR Rule, does not conflict with the court's opinion. The Court's decision with respect to the nonattainment NSR requirements promulgated by the 2008 NSR Rule also does not affect EPA's action on the present infrastructure action. EPA interprets the CAA to exclude nonattainment area requirements, including requirements associated with a nonattainment NSR program, from infrastructure SIP submissions due three years after adoption or revision of a NAAQS. Instead, these elements are typically referred to as nonattainment SIP or attainment plan elements, which would be due by the dates statutorily prescribed under subpart 2 through 5 under part D, extending as far as 10 years following designations for some elements.

section 110(a)(2)(C) regarding identification of precursors to $PM_{2.5}$ and the identification of $PM_{2.5}$ and PM_{10} condensables. EPA therefore proposes that Minnesota has met this set of infrastructure SIP requirements of CAA section 110(a)(2)(C) with respect to the 1997 ozone, 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, 2010 NO_2 , 2010 SO_2 , and 2012 $PM_{2.5}$ NAAQS.

Sub-element 4: $PM_{2.5}$ increments in the PSD program

On October 20, 2010 (75 FR 64864), EPA issued the final rule on the "Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$) - Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC)" (2010 NSR Rule). This rule established several components for making PSD permitting determinations for $PM_{2.5}$, including a system of "increments" which is the mechanism used to estimate significant deterioration of ambient air quality for a pollutant. These increments are codified in 40 CFR 51.166(c) and 40 CFR 52.21(c), and are included in the table below.

Table 1: $PM_{2.5}$ Increments Established by the 2010 NSR Rule in micrograms per cubic meter

	Annual arithmetic mean	24-hour max
Class I	1	2
Class II	4	9
Class III	8	18

The 2010 NSR Rule also established a new “major source baseline date” for PM_{2.5} as October 20, 2010, and a new trigger date for PM_{2.5} as October 20, 2011. These revisions are codified in 40 CFR 51.166(b)(14)(i)(c) and (b)(14)(ii)(c), and 40 CFR 52.21(b)(14)(i)(c) and (b)(14)(ii)(c). Lastly, the 2010 NSR Rule revised the definition of “baseline area” to include a level of significance of 0.3 micrograms per cubic meter, annual average, for PM_{2.5}. This change is codified in 40 CFR 51.166(b)(15)(i) and 40 CFR 52.21(b)(15)(i).

On September 26, 2017 (82 FR 44734), EPA approved into the Minnesota SIP Minn. R. 7007.3000, which incorporates by reference “as amended” the Federal PSD rules at 40 CFR 52.21. These Federal PSD rules fully satisfy the requirements of CAA section 110(a)(2)(C) regarding PM_{2.5} increments. EPA therefore proposes that Minnesota has met this set of infrastructure SIP requirements of CAA section 110(a)(2)(C) with respect to the 1997 ozone, 1997 PM_{2.5}, 2006 PM_{2.5}, 2008 Pb, 2008 ozone, 2010 NO₂, 2010 SO₂, and 2012 PM_{2.5} NAAQS.

Sub-element 5: GHG permitting and the “Tailoring Rule”

With respect to CAA sections 110(a)(2)(C) and 110(a)(2)(J), EPA interprets the CAA to require each state to make an infrastructure SIP submission for a new or revised NAAQS that

demonstrates that the air agency has a complete PSD permitting program meeting the current requirements for all regulated NSR pollutants. The requirements of CAA section 110(a)(2)(D)(i)(II) may also be satisfied by demonstrating the air agency has a complete PSD permitting program correctly addressing all regulated NSR pollutants. Minnesota has shown that it currently has a PSD program in place that covers all regulated NSR pollutants, including GHGs.

On June 23, 2014, the United States Supreme Court issued a decision addressing the application of PSD permitting requirements to GHG emissions. *Utility Air Regulatory Group v. Environmental Protection Agency*, 134 S.Ct. 2427. The Supreme Court said that the EPA may not treat GHGs as an air pollutant for purposes of determining whether a source is a major source required to obtain a PSD permit. The Court also said that the EPA could continue to require that PSD permits, otherwise required based on emissions of pollutants other than GHGs, contain limitations on GHG emissions based on the application of Best Available Control Technology (BACT).

In accordance with the Supreme Court decision, on April 10, 2015, the U.S. Court of Appeals for the District of Columbia Circuit (the D.C. Circuit) issued an amended judgment vacating

the regulations that implemented Step 2 of the EPA's PSD and Title V Greenhouse Gas Tailoring Rule, but not the regulations that implement Step 1 of that rule. *Coalition for Responsible Regulation, Inc. v. EPA*, Nos. 09-1322, 10-073, 10-1092, and 10-1167 (D.C. Cir., April 10, 2015) (Amended Judgement). Step 1 of the Tailoring Rule covers sources that are required to obtain a PSD permit based on emissions of pollutants other than GHGs. Step 2 applied to sources that emitted only GHGs above the thresholds triggering the requirement to obtain a PSD permit. The amended judgment preserves, without the need for additional rulemaking by the EPA, the application of the BACT requirement to GHG emissions from Step 1 or "anyway" sources. With respect to Step 2 sources, the D.C. Circuit's amended judgment vacated the regulations at issue in the litigation, including 40 CFR 51.166(b)(48)(v) and 52.21(b)(49)(v), "to the extent they require a stationary source to obtain a PSD permit if greenhouse gases are the only pollutant (i) that the source emits or has the potential to emit above the applicable major source thresholds, or (ii) for which there is a significant emission increase from a modification" *Id.*

In light of the Supreme Court opinion and subsequent D.C. Circuit judgement, EPA took steps to revise Federal PSD rules to

be consistent with these court decisions. On May 7, 2015 (80 FR 26183), EPA issued a final rule that narrowly amended the permit rescission provisions in the Federal PSD regulations, and on August 19, 2015 (80 FR 50199), EPA issued a final rule that removed several provisions of the PSD and title V permitting regulations that were originally promulgated as part of the 2010 Tailoring Rule and that were vacated by the D.C. Circuit in its April 10, 2015 judgment.

On September 26, 2017 (82 FR 44734), EPA approved into the Minnesota SIP Minn. R. 7007.3000, which incorporates by reference "as amended" the Federal PSD rules at 40 CFR 52.21. Because EPA's May 7, 2015, and August 19, 2015, amendments to 40 CFR 52.21 included updates to bring the Federal rules into alignment with the Supreme Court opinion and the D.C. Circuit's amended judgement, Minnesota is currently operating a PSD program that is consistent with both court decisions.

EPA is proposing that Minnesota's SIP is sufficient to satisfy CAA sections 110(a)(2)(C), 110(a)(2)(D)(i)(II), and 110(a)(2)(J) with respect to GHGs. This is because the PSD permitting program approved by EPA into the SIP on September 26, 2017, continues to require that PSD permits issued to "anyway

sources” contain limitations on GHG emissions based on the application of BACT.

For the purposes of infrastructure SIPs, EPA reiterates that NSR reform regulations are not within the scope of these actions. Therefore, we are not taking action on existing NSR reform regulations for Minnesota.

Certain requirements of CAA section 110(a)(2)(C) overlap with requirements of CAA sections 110(a)(2)(D)(i)(II) and 110(a)(2)(J). These links will be discussed in the appropriate areas below.

B. CAA section 110(a)(2)(D)(i)(II)

CAA section 110(a)(2)(D)(i)(II) requires SIPs to include provisions prohibiting any source or other type of emissions activity in one state from interfering with measures required to prevent significant deterioration of air quality or to protect visibility in another state.

EPA notes that Minnesota’s satisfaction of the applicable infrastructure SIP PSD requirements has been detailed in the discussion of CAA section 110(a)(2)(C). EPA further notes that the proposed actions in that discussion related to PSD are consistent with the proposed actions related to PSD for CAA section 110(a)(2)(D)(i)(II), and are reiterated below.

EPA previously approved revisions to Minnesota's SIP to meet certain requirements obligated by the Phase 2 Rule and the 2008 NSR Rule. These revisions included provisions that: explicitly identify NO_x as a precursor to ozone; explicitly identify SO₂ and NO_x as precursors to PM_{2.5}; regulate condensable PM_{2.5} and PM₁₀ in applicability determinations; and, establish emissions limits. EPA also previously approved revisions to Minnesota's SIP that incorporate the PM_{2.5} increments and the associated implementation regulations, including the major source baseline date, trigger date, and level of significance for PM_{2.5}, as required by the 2010 NSR Rule. Therefore, EPA is proposing that Minnesota's SIP contains provisions that adequately address the infrastructure requirements for the 1997 ozone, 1997 PM_{2.5}, 2006 PM_{2.5}, 2008 Pb, 2008 ozone, 2010 NO₂, 2010 SO₂, and 2012 PM_{2.5} NAAQS.

States also have an obligation to ensure that sources located in nonattainment areas do not interfere with a neighboring state's PSD program. This requirement can be satisfied through an NNSR program consistent with the CAA that addresses any pollutants for which there is a designated nonattainment area within the state.

Minnesota's EPA-approved NNSR regulations are contained in

Minn. R. 7007, and are consistent with 40 CFR 51.165 (60 FR 27411, May 24, 1995). Therefore, EPA proposes that Minnesota has met all of the applicable PSD requirements for the 1997 ozone, 1997 PM_{2.5}, 2006 PM_{2.5}, 2008 Pb, 2008 ozone, 2010 NO₂, 2010 SO₂, and 2012 PM_{2.5} NAAQS related to CAA section 110(a)(2)(D)(i)(II).

C. CAA section 110(a)(2)(D)(ii)

CAA section 110(a)(2)(D)(ii) requires that each SIP contain adequate provisions requiring compliance with the applicable requirements of CAA sections 126 and 115 (relating to interstate and international pollution abatement, respectively).

CAA section 126(a) requires new or modified sources to notify neighboring states of potential impacts from the source. The statute does not specify the method by which the source should provide the notification. States with SIP-approved PSD programs must have a provision requiring such notification by new or modified sources. A lack of such a requirement in state rules would be grounds for disapproval of this element. Minnesota has provisions in its EPA-approved PSD program in Minn. R. 7007.3000 requiring new or modified sources to notify neighboring states of potential negative air quality impacts, and has referenced this program as having adequate provisions to

meet the requirements of CAA section 126(a). EPA is proposing that Minnesota has met the infrastructure SIP requirements of CAA section 126(a) with respect to the 1997 ozone, 1997 PM_{2.5}, 2006 PM_{2.5}, 2008 Pb, 2008 ozone, 2010 NO₂, 2010 SO₂, and 2012 PM_{2.5} NAAQS. Minnesota does not have any obligations under any other subsection of CAA section 126, nor does it have any pending obligations under CAA section 115. EPA, therefore, is proposing that Minnesota has met all applicable infrastructure SIP requirements of CAA section 110(a)(2)(D)(ii).

D. CAA section 110(a)(2)(J)

The evaluation of Minnesota's submission addressing the infrastructure SIP requirements of CAA section 110(a)(2)(J) covers: (i) consultation with government officials; (ii) public notification; (iii) PSD; and, (iv) visibility protection.

Sub-element 1: Consultation with government officials.

States must provide a process for consultation with local governments and Federal Land Managers (FLMs) carrying out NAAQS implementation requirements.

In our previous rulemakings at 76 FR 41075, 77 FR 65478, 79 FR 41442, and 80 FR 63450, EPA determined that Minnesota has met the consultation with government officials requirements of CAA section 110(a)(2)(J) with respect to the 1997 ozone, 1997 PM_{2.5},

2006 PM_{2.5}, 2008 Pb, 2008 ozone, 2010 NO₂, 2010 SO₂, and 2012 PM_{2.5} NAAQS.

Sub-element 2: Public notification.

CAA section 110(a)(2)(J) also requires states to notify the public if NAAQS are exceeded in an area and to enhance public awareness of measures that can be taken to prevent exceedances.

In our previous rulemakings at 76 FR 41075, 77 FR 65478, 79 FR 41442, and 80 FR 63450, EPA determined that Minnesota has met the public notification requirements of CAA section 110(a)(2)(J) with respect to the 1997 ozone, 1997 PM_{2.5}, 2006 PM_{2.5}, 2008 Pb, 2008 ozone, 2010 NO₂, 2010 SO₂, and 2012 PM_{2.5} NAAQS.

Sub-element 3: PSD.

States must meet applicable requirements of CAA section 110(a)(2)(C) related to PSD. Minnesota's PSD program in the context of infrastructure SIPs has already been discussed above in the paragraphs addressing CAA sections 110(a)(2)(C) and 110(a)(2)(D)(i)(II), and EPA notes that the proposed actions for those CAA sections are consistent with the proposed actions for this portion of CAA section 110(a)(2)(J).

Therefore, EPA proposes that Minnesota has met all of the infrastructure SIP requirements for PSD associated with CAA

section 110(a)(2)(D)(J) for the 1997 ozone, 1997 PM_{2.5}, 2006 PM_{2.5}, 2008 Pb, 2008 ozone, 2010 NO₂, 2010 SO₂, and 2012 PM_{2.5} NAAQS.

Sub-element 4: Visibility protection.

With regard to the applicable requirements for visibility protection, states are subject to visibility and regional haze program requirements under part C of the CAA (which includes CAA sections 169A and 169B). In the event of the establishment of a new NAAQS, however, the visibility and regional haze program requirements under part C do not change. Therefore, no new visibility obligation is "triggered" under CAA section 110(a)(2)(J) when a new NAAQS becomes effective. In other words, the visibility protection requirements of CAA section 110(a)(2)(J) are not germane to infrastructure SIPs.

IV. What action is EPA taking?

EPA is proposing to approve a submission from Minnesota certifying that its current SIP is sufficient to meet the infrastructure SIP requirements relating to PSD, at CAA sections 110(a)(2)(C), 110(a)(2)(D)(i)(II), 110(a)(2)(D)(ii), and 110(a)(2)(J), for the 1997 ozone, 1997 PM_{2.5}, 2006 PM_{2.5}, 2008 Pb, 2008 ozone, 2010 NO₂, 2010 SO₂, and 2012 PM_{2.5} NAAQS.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those

areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: May 4, 2018.

Cathy Stepp,
Regional Administrator, Region 5.

[FR Doc. 2018-10458 Filed: 5/16/2018 8:45 am; Publication Date: 5/17/2018]